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THE ROLE OF THE VICTIM IN SENTENCING AND RELATED PROCESSES



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Irvin Waller
University of Ottawa
1988

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INTRODUCTION

"Greater than the tread of mighty armies is
an idea whose time has come"

Victims suffer as a result of crime. They are a reason for the existence and effectiveness of criminal justice. Their personal interests are affected by sentencing and related decisions. For these reasons increasingly it is realised that their views must be considered and respected.

In 1985 the General Assembly of the United Nations adopted a declaration on "Basic Principles of Justice for Victims of Crime and Abuse of Power" (see Appendix A). This declaration established for the first time in the United Nations the rights of victims to fair treatment and access to justice, to restitution from the offender, to compensation from the state and to basic services to support the recovery of the victim.

In 1985 the Ministers of Justice of European nations adopted guidelines for change to improve respect for the victim (Council of Europe, 1985). These included requirements for the victim to be informed, restitution to be given priority and courts to consider information on harm suffered by the victim.

In 1985, the second United States Federal act on victims of crime in two years was implemented (United States, 1984). In essence this will speed up the implementation of services and rights for victims of crime in all States jurisdictions. It will consolidate the massive legislative reform, which has seen over 50 different types of victim related bills, including victims, bills of rights in 31 states (NOVA, 1985).

Since 1981 Canada has had Task Forces (particularly Canada, 1983) and Workshops (Ontario, 1984; CCJA, 1985; CCSD, 1985) study "Justice for Victims". Organizations of family members of slain and sexually abused victims are forming in different provinces. Victim advocacy groups are being established. Bills on victim rights and sentencing reform to recognise victims are being introduced to legislatures. The Federal and Provincial governments are expected to move from experimental projects to implementing a comprehensive victim policy, structured on basic rights for victims (see example in Appendix B) and new taxes on offenders before the end of 1986.

The focus of public debate on sentencing is also changing. Are prosecutors "toothless tigers" because they do not seek restitution enough? Should parole boards release prisoners whose victims are living in fear of reprisal? Can justice occur when judges cannot hear first hand about the impact of the crime on the victim?

The realization that the criminal process affects victims interests has to be integrated with the traditional sentencing concerns. In that debate the key questions have been: Did the prosecutor persuade the judge to give a long enough sentence? Did the defence lawyer's presentation influence the judge to be lenient? Will the sentence be an adequate deterrent? Will the offender be rehabilitated? Will that amount of prison time incapacitate the offender for long enough? Did this judge give the same sentence as that judge would have given?

For that debate the victim was needed only to initiate the process, act as witnesses and provide the justification for the severity of the sentence. This omission of the victim follows from a tradition of anglo-american justice that assumes that crime is against the state, so that it concerns only the state and the accused or

convicted person. Some say it was designed to avoid blood feuds and vigilantism. Supposedly the victim should wait to use the civil process to recover damages or some other remedy from the offender.

For the new debate, it is recognised that the person who suffers most from the crime is the victim. The criminal process is seen to affect the reputation, safety, possibilities for reparation and feelings of justice for the victim. Finally the criminal justice process depends for its existence and success on the participation of victims.

This report follows from an analysis of selected documents on the Canadian, French and American systems of justice. Discussions have been held with experts from each of these jurisdictions.

The report itself is divided into five parts. In the first part, the general arguments for and against participation of the victim in sentencing and related processes are discussed. It emphasises that victims are the quintessence of the criminal justice process. It reminds us that victims are needed as witnesses. It shows the ways through which the criminal justice process affects the personal interests of victims in their safety, reparation and justice. It looks at these issues in relation to parole.

In second part, the trends in France and the USA are summarised. The traditions of the French system of Partie Civile will be explained, showing how the victim has been involved for many years. The massive accumulation of U.S. legislation and model bills is overviewed before discussing the efforts to train judges to treat victims more fairly. Then sentencing and victim legislation at the Federal level is discussed. The activity in selected states is used to show the variety of ways in

which the victim is implicated in sentencing and to assess the impact of this legislation on prison populations.

In the third section, recommendations on victims and sentencing are reviewed for Canada from reports that have followed two approaches. First of all those that have concentrated on revision of the criminal law, following the early work of the Law Reform Commission. Then, those concentrating on justice for victims starting with the Federal/Provincial Task Force. Our major interest in both of these is the use of restitution, victim impact statements and involvement of the victim in bail, sentencing and parole.

In the fourth section the potential role of victims in sentencing is discussed. Eight recommendations are made on how the victim could be involved more in sentencing and related processes.

In the fifth section, the basic needs of victims as articulated in the second section are used to review how a presumptive sentencing model might use the victim more.

In the sixth section, the potential role of the victim in sentencing system structured by explicit principles is discussed, based primarily on the structure of Bill C-19 (1984). This focusses on the purposes, principles, procedures, and judicial training that could be implemented.

PART I WHY SHOULD VICTIMS PARTICIPATE IN THE CRIMINAL PROCESS?

Crime denies the humanity of the victim, often in cruel terms. The victim is harmed intentionally and arbitrarily and usually suddenly by an offender. The uncaring acts of the robber, murderer or burglar result in financial loss, physical injury and emotional trauma, not only to the direct victim, but to spouses, children or close friends (Waller, 1982 & 1985; C.C.S.D., 1985; N.I.M.H., 1985; A.P.A., 1985; N.O.V.A., 1983).

The degree of trauma will depend on the crime, its nature and the extent to which the victim can tolerate post traumatic stress. The more severe emotional trauma will involve intense feelings of fear, guilt and anger, which will vary over time, as the victims adjust to the incident (Waller, 1985; A.P.A., 1984). This Post Traumatic Stress Disorder is now recognised by the medical profession.

Suffering the negation of the criminal act however is often only the beginning of the denial of the victim in the justice system. The victim is likely to suffer "secondary victimization" in the justice system. The legal doctrine that we have inherited from the 19th century says that a crime is against the state (Hudson, 1984; Gittler, 1984). This denies the existence of the victim once again. However this time, it is done by the state, which is acting objectively, but ponderously and uncaringly.

This legal fiction is difficult to accept in a real situation: Try telling your daughter or wife after she has been raped that the rape was against the Queen. Then try telling her that she has no rights to know if the offender has been caught, that she cannot raise her concern for her own safety when he is being considered for bail,

that she cannot explain the way her life has changed to the judge deciding sentence. The same would apply were you to tell any victim you care about that even though their resident was entered, their life threatened at gun point, their child slain - these crimes are crimes against the state not you.

It is hardly surprising that victims are found on the steps of our courts of justice- angry and frustrated with a "Criminal" Justice System that is just that a justice system for the criminal.

- **Victims' Interests in the Criminal Justice Process**

There are five main things necessary to allow victims to restore their sense of worth and to get on with their lives.

1. Reparation

Victims feel that the harm should be repaired. This reparation may mean a payment from the offender, but could also mean an apology or other action by the offender to make redress.

2. Support

Victims feel that the state must show community support for their plight by providing compensation and support services to assist with practical issues of recovery. Part of this could take the form of health care or state compensation.

3. Harm Recognized

Victims feel that the harm against them must be recognized by the court. They are taught by the media and prosecutors that the longer the sentence the more serious the offence. Away from the retributive dogma, victims want to be sure that

the court "validates" the harm to them. Psychologically this recognition is crucial to their recovery. In addition to recognition by the court, they feel that it is important that the offender recognise the harm that he did. It reverses the feelings of negation that were so painful as the victim.

4. Protection from Victimization

Victims feel vulnerable to the crime occurring again so they want protection from that crime recurring. Perhaps they think they were specially selected by a previously unknown offender who would attack them again. Perhaps the offender is known to them and so they have other reasons to suppose that it may happen again.

5. Safety from Retaliation

Victims are worried about protection from retaliation. That is, they often feel that the offender may come back at them, because they called the police and were prepared to testify against the offender. It is hard for a victim whose feelings of security have recently been shattered to accept that this retaliation is rare. Also the fact that the offender could be charged for threats, retaliation, interfering with justice or a new offence, is little consolation for somebody who knows that this type of threat was not sufficient to stop the original victimization.

- Law Enforcement's Interests in the Victim Participation

In addition to the victims' interests there are other reasons why the state's concern to enforce the laws requires us to look at the needs of victims.

Victims are needed to alert the police to criminal code offences. Yet the results of the Canadian Victimization Survey suggest that nearly one half of common criminal code offences such as assault, theft and break and enter are not reported to the

police (Canada, 1983-). Apparently many victims are not prepared to participate in a legal system that ignores them, but requires them to be present at court at the convenience of the judge, the defence counsel or the prosecutor.

Victims are needed as witnesses for cases that go to trial. Our traditional approach to getting victims to the "court" on time has been to make it part of their civic duty. However they can also be coerced by the use of contempt of court provisions which make it possible for the use of prison (or more severe sanctions) if they do not comply. Victims are more likely to go to courts where they are welcomed than where they are coerced. They are also more likely to go to courts where their interests are respected.

Public support of criminal justice is needed to ensure that adequate funds are voted by our legislatures. So victim's feelings can be important and so the way victims are treated may influence that public support.

- **"Justice for Victims"**

To the extent that victims' personal interests are affected by criminal procedure, one can apply the generally accepted principles of "Natural Justice" to victims within criminal procedure. Two of the general rules (Mullan, 1973, 3-62) relate to:

1. The duty to give persons specially affected by the decision a reasonable opportunity of presenting their case.
2. The duty to fairly listen to both sides and to reach a decision untainted by bias.

The legal text books suggest that such natural justice would require procedures that specify how the person affected will be given sufficient notice, information on the

scope of the hearing, fair knowledge of the arguments and evidence presented against their interest and an opportunity to rebut. In addition, it may include rights to oral evidence, reasons for a decision, cross examination and representation by counsel.

The following are the issues that most directly affect victims of crime:

1. Notification

Victims may want to be notified of the time and dates of significant hearings affecting the crime against them (A.B.A. 1983). Victims may want this in cases where reparation is being sort, or they feel that release of the accused could jeopardise their safety or the courts decision would depreciate the seriousness of the offence.

2. Fair Knowledge of Scope and Material

Victims want to know how the criminal justice process works. They want to know what their role would be as a witness, but also whether they can apply for restitution, what factors will be considered by the judge in deciding bail, guilt or sentence.

3. Being Present

Victims may want to observe at the bail, trial or sentencing stages to know that justice was done.

4. Being Heard and Opportunity to Rebut

Many aspects of a criminal case are based on the role of the victim in the crime as well as the harm done to the victim. In addition their reputation can be affected by the evidence - not just in sexual assault cases. The offender can present a full set of mitigating circumstances to which the victim wants to be

able to present the harm done. So they want to be able to present their point of view (Amernic, 1984). Further they want to be able to tell the court directly what harm was done, ask for restitution, tell the court their concerns if the offender is released.

5. Reasons for Decisions, Following Specified Criteria

Justice for victims involves some explanation of the decisions taken by the court. If the criteria for deciding sentence were made explicit for sentence or remand, then the reasons for the decisions should be based on these criteria.

6. Some Form of Appeal or Mandamus Procedure

If these procedures are to be respected, then the victim must have some form of recourse to ensure that they are followed.

So we have seen that victims have needs to get reparation, community support, recognition and retribution, prevention and protection from retaliation.

In line with natural justice, procedures would define how notice of critical hearings would be given to victims, how much they will be informed about the court procedures, whether they can be present, how their views would be heard, whether reasons would be given and what remedies such as "mandamus" or appeal they would have.

With few exceptions these procedures for victims have not been considered in Canada. However, the procedures for natural justice have been specified for suspects and offenders. For instance, the responsibilities for police, lawyers, judges and correctional authorities are clearly set out in such laws as the British North America Act, the Criminal Code and Canada's new constitution.

PART II EXPERIENCE IN FRANCE AND SELECTED U.S. JURISDICTIONS

There are many concrete examples of how natural justice for victims is provided in other jurisdictions.

France

For more than a century, France and its colonies have allowed victims to join their tort action against the offender to the state's criminal action - as the "partie civile" (Bougat & Pinatel, 1963; Vouin, 1973; Schlesinger, 1980). In theory the victim's participation is limited to issues relating to restitution, but in practice this procedure gives victims standing at all critical stages in the criminal judicial process. Indeed victims are able to present views on prosecution, have access to the file on the investigation as well as speak to sentence when requesting restitution. Court time is saved because both civil and criminal issues are settled before going to trial and there is no need for a separate civil and criminal procedure. In France, legal aid is available to the victim for these procedures and amendments are pending, which would allow the victim access to the parole hearing.

France explains its justice system to victims in a paperback book that has sold more than 100,000 copies. This official publication of the French Ministry of Justice - "Guide des Droits des Victimes" - describes the victim's role as:

1. obtenir la réparation matérielle du préjudice (i.e. get restitution)
2. participer à la recherche de la manifestation de la vérité (i.e. assist at arriving at the truth).

It points out that it is only the state that can seek a penal sanction. However, it also stresses the advantages to the victim of joining the criminal process - "il est plus rapide, plus efficace et moins couteux" (p.27) - quicker, more effective and less expensive. The examining magistrate can assist the process by their powers of investigation and their control over the accused. A deposit may be required of the accused which could be used for both a fine and restitution.

Victims in Canada are sometimes frustrated to find that prosecutors accept their pleas of guilt on manslaughter charges when they feel that their child was murdered. In France the outcome may be the same, but the victim has the right to get a judge to decide whether charges should be dropped or a plea accepted to a lesser charge.

The French have not yet given victims a right to appear in front of the "juge des applications des peines", who supervises sentences of the court and decides on some types of parole. However, consultation is normal and they have placed a person concerned about victims on the committee with whom the Minister of Justice must consult before deciding parole in more serious cases.

USA

This report focusses on the role of victims in sentence and related processes. However, it does not give a complete description of trends in sentencing, which are available elsewhere (e.g. Brodeur, 1985; Von Hirsch, 1985). However, it is striking in the USA that most sentencing legislation has been introduced to promote determinate and mandatory sentences; these were hoped to reduce disparities supposedly due to the uncertainties of indeterminate sentences associated with the rehabilitative concept and dangerous offender legislation.

While little is known about whether this wave of legislation has achieved these objectives, it has been associated with harsher prosecution policies that have sent the number of persons incarcerated in the USA from approximately 500,000 in 1981 to 725,000 in 1985 despite only marginal increases in crime rates. It is likely that some of this harshness has been encouraged by grass root victim groups, who have become increasingly well organised in recent years.

It is these same groups who have been the principal protagonists to gain recognition for the victim in the sentencing process. As services are provided and they become involved on a case by case basis, it appears that individual sentences are influenced by them, but as often to decrease the sentence as increase it.

- **Legislative Trends**

More than 34 States, – and the number is rising fast – have adopted statutes to require courts to consider a report on the impact of the crime on the victim (see Summary of US State Crime Victim Legislation in Appendix C). Moreover 31 states have adopted statutes called "Victims Bills of Rights" (see the Massachusetts Bill of Rights in Appendix E) which set standards for issues such as:

Victim/Witness Notification

Property Return

Witness Information

Separate Waiting Areas

Information about Criminal Justice Proceedings

Employer Intervention.

The Massachusetts Bill sets up a Crime Victim Assistance Board to distribute money raised from "Taxes" on convictions in order to ensure the implementation of the rights and provide victim assistance workers in prosecutors offices. These workers explain criminal justice procedures to victims, prepare victim impact statements and help victims participate in sentencing and related processes.

One of several model acts on victim issues, prepared for the Federal Department of Justice, sets out ideal rights. Other model acts cover the role of the victim in bail, parole and sentencing procedures.

Further, many States have included specific procedures to allow the victim to be present and heard at all critical stages in the criminal justice process. For instance, the Massachusetts Bill requires the district attorney to prepare a written statement as to the impact of the crime on the victim, including net financial loss and effect on victim's social welfare or psychological state. It also gives the victim a right to make an oral or written opinion as to the impact of the crime and as to a recommended sentence.

In 1982, the US Presidential Task Force on Victims of Crime (U.S.A. 1983) made 69 recommendations for government, lawyers, mental health specialists and six other groups of Americans. These recommendations included a proposed constitutional amendment to give victims, "in every criminal prosecution, the right to be present and to be heard at all critical stages of judicial proceedings". If this becomes the 27th amendment to the US constitution as some legislators plan, it would establish natural justice rights for victims at the charge, bail, trial, sentencing and parole hearings in every US jurisdiction.

- Judicial Training and Guidelines

As in Canada all of the natural justice rights of victims can be achieved if judges decide to exercise their discretion under present law to allow victims to participate. To encourage this way of allowing victims to participate, various guidelines and training programmes have been developed for judges.

In 1983 (US Department of Justice, 1984), US judges recognised the need for change in their treatment of victims. Two judges from each state met with victim advocates and victims at the National Judicial College. This meeting resulted in a Statement of Recommended Judicial Practices, covering Fair Treatment of Victims and Witnesses, Victim Participation, Protection, Judicial Education and Existing Rules of Practice. The recommended practices arising out of this meeting have been circulated to juvenile court judges in Ontario (see Appendix D).

These guidelines provide information to victims about the process including notice of hearings and release decisions. They encourage restitution in all cases. However they also provide a concrete way of presenting the views of the victim to the court for bail, scheduling, plea and sentence negotiation and sentencing. Thus they provide a way for the court to encourage reparation, give support, "recognise" the victim and deal with fears of retaliation and revictimization.

In 1983, the U.S. administration introduced the guidelines for all its federal investigative and legal personnel (US Attorney General 1983). It required victims to be informed about all stages in the prosecution, mandated "consultation with the victim" to obtain views and provide explanations before all critical stages in the criminal process.

- **US Federal System**

At the US Federal legislative level the 1982 Victim and Witness Protection Act (US Congress, 1982) provided for written "Victim Impact Statements", compulsory consideration of restitution, harsher penalties for threatening witnesses and state accountability for grossly negligent release of offenders.

This means that the judge must give reasons if restitution is not ordered (US Congress, Sect. 111) and specifies that the presentence report prepared for Federal Judges will contain "verified information stated in a nonargumentative style assessing the financial, social, psychological and medical impact upon and cost to the victim, including any need for restitution" (US Congress, Sect. 1).

On sentencing generally, the US Federal System has just established a sentencing commission. As yet they have not developed any specific proposals. In interviews with them, it is clear that they are committed to respecting the interests of victims. Their chair person comes from a jurisdiction where victims regularly give oral statements on sentence and their senior staff have had recent experience with victim issues. At the Federal level, many of the crimes do not have victims, though the 1984 legislation specifies a special assessment of \$50.00 on a felony conviction and \$25.00 on a misdemeanor conviction to go to a special fund to improve compensation and victim services in the USA. Also fines will go to this same fund.

- **California**

The first systematic attempts to prepare "Victim Impact Statements" occurred in California in Fresno County in 1974. By 1978 a penalty assessment scheme had been

introduced to take an additional surcharge on fines for a central fund out of which victim assistance and victim compensation would be funded.

California moved to a form of presumptive sentencing in the late 1970's. This did not have any special provisions to take the concerns of the victim into account.

In the early 80's "Proposition 8 - The Victim Bill of Rights" was approved by the people of California. This required the state to enact a series of pieces of legislation to encourage the use of restitution and give victim's a right to talk to sentence.

Unfortunately little information is available on how this legislation influences sentencing. After studying the use made of the right to present written and oral statements to the sentencing judge in three California counties, Neto (1985, p.15) suggests that there are two types of experience with the criminal courts for victims. In one type, family members of very serious crimes participate, because they are dissatisfied with prosecutor or the probation officer; they often remain dissatisfied with the process and are wanting longer sentences. In the second type, the victims have had extensive positive contact with the criminal justice officials which continues to leave positive feelings as a result of their involvement with the court process.

Her findings generally reinforce those of the NIJ study's conclusions that:

"Victims are generally more satisfied with the way their case is handled when they are informed and have access to someone in the criminal justice system who listens to and appears to care about their opinions." (Hernon & Forst, 1984 quoted in Neto (1985)).

Victims prefer to receive restitution rather than have the offender sentenced to prison. Also victims who were related to the offender or knew the offender wanted mitigated sentences.

- **Massachusetts**

Massachusetts (1984) requires the district attorney to inform the victim of the right to request restitution and gives the victim the right to have a written or oral statement presented to the court (see Appendix E).

This legislation is too new for us to be able to comment on its influence on sentencing. However each District Attorney's Office now has a victim assistance worker who can explain the criminal justice process to the victim as well as prepare the written part of the victim impact statement.

- **Minnesota**

Restitution has been encouraged in Minnesota for many years. Further victim impact statement legislation has been introduced. However victims have been largely ignored in the Minnesota sentencing guidelines system which was designed to reduce disparity in the number of persons sentenced to one year or more and increase the proportion of these persons who are convicted of violent crime.

In general terms the "grid" takes into account effects on the victim that might be considered aggravating through the severity of offense scale. Even with victim impact statements, few departures result from victim's pleading aggravating circumstances. However, several departures have occurred because victims have requested lesser sentences.

Information on the impact of the crime on the victim is introduced by way of a "Victim Impact Statement". These reports are designed to assist the judge in deciding

the impact of the crime on the victim in financial, physical and emotional terms, so that the court can estimate the need for restitution.

Under a separate provision in the Victim Bill of Rights, the victim has a right to provide an opinion and talk at the sentence hearing.

The guidelines are limited to variations in prison sentences, so the provisions for encouraging restitution and the victim impact statement may influence the sentences that involve prison for less than 1 year.

- New York

In 1984, the New York State Committee on Sentencing Guidelines proposed a grid with a 12 band offense severity scale and 5 band criminal history score. Departures are possible provided they meet certain defined mitigating or aggravating factors (see Appendix F).

Indeed, these factors articulate ways of holding the offender accountable for the effect of his behaviour on the victim. In particular, sentences would be increased where the foreseeable consequences of his crime were likely to be more painful to the victim. Although these have not yet been adopted, they provide an excellent model for criteria that should be considered in either a sentencing grid or in a model based on principles.

The New York Crime Victims' Board undertook a quick assessment of the impact of new restitution and victim impact legislation by phoning a key person in each of 11 states (NY Crime Victim Board, 1985). This suggested that victim impact statements had not had any general effect on prison time ordered, though there may

be exceptions in Ohio, where it may have increased for violent crime. The victim impact statements lead to an increase in the use of restitution. Victims feel positive about victim impact and oral statements laws. It has little or no fiscal impact.

- **South Carolina**

South Carolina has also been studying a system of bench mark offenses which has not yet resulted in sentencing legislation.

Although no research is available, oral victim impact statements are a regular feature of sentencing in many courtrooms. They seem to provide the victim with a feeling of participating and have some influence on sentences. In cases where the victims are surviving family members of a slain victims, the effect is often to increase the sentence. In other cases where the victim may have contributed in some way to the offense or the victim and offender know each other, the effect may be to decrease the sentence.

South Carolina like many US States has seen an increase in its prison population of over 50% within the last five years. It is usually thought that this is due to a harsher prosecutorial policy rather than any specific effect of victims testifying in court.

PART III RECOMMENDATIONS IN CANADIAN REPORTS

In Canada there are already some limited rights of crime victims safeguarded in the law (see present rights of crime victims in Canada in Appendix G). For instance the Young Offenders act requires the predisposition report to include an interview with the victim and the Criminal Code has several sections that enable restitution to be ordered.

Further many judges and prosecutors have used their powers of discretion to involve the victim. For instance some judges regularly invite the victim to comment before sentence is decided. Some families of murder victims have been given an opportunity to make a statement to the court. Some police forces are providing crown counsel with what they call a victim impact statement (Chappell & Hatch, 1984). Restitution is being used more and more as a part of probation orders.

However most basic rights of victims are not guaranteed. So reports dealing with revisions to the criminal law have recommended improvements and reports dealing with justice for victims have recommended improvements in sentencing procedures.

Revising the Criminal Law

The Canadian Law Reform Commission has indirectly provided for the victim in many of the reports it prepared in the 1970's. The general tone of these reports was to promote diversion of cases out of the criminal justice system and encourage restitution as an alternative.

However, fair treatment of victims requires realistic recognition of the interest of victims in the trial and disposition of the wrongdoer. This was recognised as early

as 1981 in the set of rights articulated by the Canadian Council for Social Development (CCSD, 1981), which included among others the "Right to present views and to participate in each stage in the process".

In 1982, the Canadian Association for Prevention of Crime (1982) made concrete recommendations for the overhaul of criminal procedure in Canada, in which it recognised that the victim must be given much greater recognition. It argued that ten principles be entrenched in the criminal code to guide the criminal justice process. These included the respect for the rights and dignity of victims and the right of victims of crime to redress for pain, injury and financial loss. It also recommended that there be provision in the criminal law to ensure involvement of the victim in the criminal justice process by victim injury statements, consultation by the crown with the victim, opportunities for the victim to present views on sentence and restitution as well as legal representation when the reputation, privacy or other right of the victim is at stake.

When the Canadian government declared the principles to be followed in the revision of the Criminal Code in the Criminal Law in Canadian Society (Canada, 1982), it did not stress respect for the dignity of the victim even though it talked about just procedures to deal fairly with conduct causing serious harm. However it did state:

- (g) wherever possible and appropriate, the criminal law and the criminal justice system should also promote and provide for:
 - (i) opportunities for the reconciliation of the victim, community, and offender;
 - (ii) redress or recompense for the harm done to the victim of the offence;
- (Canada, 1982, p.5-6).

Justice for Victims

The Federal/Provincial Task Force (Canada, 1983a) made 79 recommendations to improve justice for victims. If implemented, they would make major improvements in emotional and practical assistance for victims. However, there were few recommendations relating to the victim in the criminal process. Those that did, focussed on more efficient property return, information about trial dates and outcome, and notification about release from custody. The recommendations on restitution required its consideration and an opportunity for the victim to make representations. An undefined Victim Impact Statement was to be included in the presentence report.

Gordon Walker, the Provincial Secretary for Justice in Ontario (1984) brought victims, victim advocates and criminal justice officials together to study the Task Force report and make recommendations to the Ontario cabinet. These recommendations stressed the need for greater participation of the victim in criminal process by establishing a victim advocacy mechanism to tap into the charge, bail, change of tenure, plea bargaining, preliminary hearing, trial, sentence, corrections and releases (p.130).

In 1985, the Canadian Criminal Justice Association held a workshop to examine specific ways to achieve these goals with lawyers, judges, prosecutors, victim representatives and victim advocates (CCJA, 1985). There was strong consensus that while crimes are "committed against the state", they are in fact perpetrated against specific individuals. So the interests of victims must be recognized and protected. This must include consultation between victims and prosecutors on plea negotiations, explanations of the process and the right to submit victim impact statements.

Plaidoyer-Victimes (1985) stresses the harm done to the victim and the need for recognition of the victim. So they recommend that the victim should be considered an independent party in sentencing and that the main purpose of sentencing should be reparation. The victim should be heard on the nature of the harm done and given rights to legal representation on a basis similar to the accused.

PART IV RECOMMENDATIONS FOR VICTIM ROLE IN SENTENCING AND RELATED PROCESSES

The United Nations declaration, the needs of victims, the principles that flow from the trends in the USA and France, and the recommendations from Canadian reports suggest a number of areas for improvements in the role of the victim in sentencing and related processes.

- Redress from the Offender

Without exception, reparation from the offender is to be encouraged in the criminal justice process. This could be achieved through four actions.

1. There should be one independent section in the criminal code to provide for payments from the offender to the victim.
2. The judge would be required to make payments unless he provides reasons, which might include the inability of the offender to ever pay.
3. The prosecutor would introduce a written report on the extent of the damage done to the victim as part of the sentencing hearing.
4. The victim would have a right to present additional information if necessary.

Complex cases could be referred to civil courts. Organised attempts to refer suitable cases to victim-offender reconciliation projects could be encouraged by providing adequate funds, referrals by courts and active support from the legal establishment.

This would also require the police to inform the victim of the possibility of restitution, explaining the type of information - receipts - that the court would need.

Enforcement of the orders could be done in a manner similar to the enforcement of fines under the Ontario provincial legislation. That is, using imprisonment as a last resort but providing for civil procedures for enforcing payment.

It is often argued that reparation is better dealt with in civil court, particularly in cases involving complex assessment of damages. However, it is a second court process requiring extensive psychological and financial resources. In Canada, the constitutional split between the Federal and Provincial government poses a question about the jurisdiction of a criminal court in ordering civil damages. This could be solved in a number of ways including "Unified Criminal Courts" solving the problem cooperatively as was done for the similar problem for divorce. Restitution could also be considered a criminal sanction.

In short, restitution would be a normal part of the sentence of a criminal court and not just ordered at the whim of the judge or where there happens to be a pre-sentence report.

- Police to Provide Information

Police are the agency most often contacted by victims after the crime. Thus they are the most pivotal agency. Although approximately 50% of victims of break and enter, robbery, assault and similar offences do not report to the police (Canada, 1983b), more victims report their victimization to the police than to any other agency - this is even true of sexual assault (Waller, 1985).

5. The police would provide the victim with information and explanations of the criminal justice process. The information would include their basic rights to participate in the sentencing process.

The police can be a source of information about the judicial process. For instance they can make the victim aware of the possibility for restitution and state compensation. They can keep the victim reasonably informed of progress in the investigation. They can also facilitate the return of property when it is recovered.

Internationally Canada is among the leaders in the police area. However, the US Attorney's General Guidelines (1983) specify that the police patrol officer and the investigative officer will refer victims to appropriate counseling services and indicate how to apply for compensation. They also require those victims of serious crimes who have given an address to be informed of arrest, charging and release of the accused.

- **Unimpeded and Fair Access to Justice**

From the decision to arrest through to the sentence, the victim must be informed of progress and accepted as part of the process.

6. The victim's needs when used as a witness must also be respected: the victim may be provided with separate waiting areas; cases can be scheduled with some regard to the victim's personal or employment commitments; the process in court can be explained to the victim; the real potential for retaliation and means to counteract it can be explained. Where the court wants to exclude the victim or their family from the trial, the victim should be given an opportunity to object.

Quebec was the first province to make systematic improvements in the information available to the victims, when it started providing the victim with an information leaflet to explain the sub-poena. Ontario has established some pilot projects where a coordinator is available in the court house to facilitate the victims' arrival and experience with the court room. More recently, Ontario has appointed a coordinator for the province to try and extend this type of service more widely.

However, for the courts, no Canadian jurisdiction has gone as far as the Vera Institution in New York which established a Victim Service Agency in 1976 to schedule all civilian and police witnesses and provide waiting rooms and community services for them. This agency is now run on a budget of approximately 6 million dollars less than it saves New York in real reductions in police overtime.

Notifying the victim can be achieved by asking those victims who want to be notified to give their name, address and telephone number to a victim assistance unit. This unit in turn would get information on the police investigation and the prosecution which could then be relayed to the victim. Much of this can be done by word processing systems such as those used the Edmonton police.

7. Where the victim has an interest affected by a court decision such as release of the offender, punishment of the offender, a programme to reduce the offenders involvement in crime - the victim must be given an opportunity to be present and heard.

The least intrusive means to achieve this objective would be for the victim to be consulted by the prosecutor who would prepare the statement of views. Where the victim is not satisfied with the prosecutor's presentation the victim must be given a

right to present views directly in more serious cases. In some instances the victim should be provided with a separate lawyer.

- **Protection from Further Victimization**

8. Victims can be protected in a variety of ways from retaliation. They can have the case resolved expeditiously. Their evidence can be finalised early. They can avoid being faced by the perpetrator by the use of videotape evidence.

In addition, Israel for many years and some US jurisdictions more recently (NOVA, 1985) have modified the evidence procedures so that commissioners of evidence and videotapes can be used to reduce the number of situations where it is necessary to bring a victim, particularly a child to court.

Present sentences do not always focus on the need for protection of the public including the victim. Much more could be done to ensure that programs likely to reduce recidivism become a central part of our justice process. Further we could likely reduce crime by significant amounts through the use of tested crime prevention procedures and the commitment to crime prevention based on knowledge about the cause of crime (CCSD, 1984).

PART V POTENTIAL ROLE IN PRESUMPTIVE SENTENCING

There are two major models for improving sentencing in Canada. The first model will be discussed in this part. This is the presumptive sentencing model (Brodeur, 1985) which provides a limited range of sentences for persons with specified histories who commit crimes of a specified seriousness. The second model will be called the sentencing principles model, which enunciates specific purposes, principles and criteria in a code. This is discussed in part VI.

The best known example of the presumptive sentencing model is the system in Minnesota (Minnesota, 1986 & 1984). It is assumed here that parole is abolished though the offender can still earn remission off the fixed sentence. Also we will use aggravating/mitigating factors that were proposed for New York State in 1984 as they are useful for involving victims.

In these models, the bands for the severity of offence scale reflect the seriousness of the harm done to the victim. So in general terms the greater the injury and the greater the property loss the longer the prison time. However, in New York aggravating factors are specified such as those where the offender used deliberate cruelty or knew that the victim was particularly vulnerable. Also mitigating factors include the victim's contribution and attempts by the offender to prevent harm.

These models provide some advantages to victims as it is clearer what sentence is likely and when the offender is likely to be released. However they require some modifications to recognise the basic interest of victims.

1. Reparation

Where a presumptive sentencing system is in place, it is still possible to require the judge to consider restitution. This would necessitate the preparation of a victim impact statement and giving the victim a right to be heard. It would also require the judge to give written reasons where restitution was not ordered.

In addition the section of the sentencing grid not referring to prison time could be developed to provide guidelines on both restitution and punitive damages that could be paid.

2. Support

Victims would still need to be informed of support services available.

3. Harm Recognised

The harm done to victims must be recognised by the court. For this to happen a victim impact statement must be prepared immediately after the crime is reported covering losses, injuries and emotional problems arising out of the crime. This would likely be prepared by a victim assistance worker employed by the police in urban areas or by the police themselves in isolated areas. This would need to be updated before sentencing with an additional commentary on any of the aggravating/mitigating factors that are specified in the law.

In large part the prosecutor could argue the necessary aggravating or mitigating factors without any consultation with the victim beyond the evidence at the trial. However in 90 per cent of cases there is no trial and some form of negotiations have taken place on what evidence will be used and what charges preferred with the police and the prosecutor. So the police and prosecutors must set up mechanisms to consult

with victims on these processes. Further one needs to establish a procedure so that a victim can ensure that a judge decides what charge to be preferred where the victim is dissatisfied with the consultation. This could be done by giving the victim a right to representation at preliminary hearings.

4. Protection from Victimization

One of the aggravating factors should specify the likelihood that the offender will return to threaten the victim.

Further a condition of transfer into an open prison in the community could be that a proportion of the inmate's earnings would be paid in restitution to the victim.

PART VI POTENTIAL ROLE IN SENTENCING PRINCIPLES

This model is based on that recommended in Bill C-19 in 1984 (Canada, 1984a & b). It is assumed that judges would be provided with information on average sentences that are being given not only for offences in particular sections of the criminal code and offenders with specified criminal careers, but with the amounts of restitution and punitive damages that have been ordered.

- **Purpose**

There are a variety of purposes that have been put forward. The US Model Statute on Victim Impact Statements provides the best model. The purpose of sentencing is:

"Protection of the public, restitution to the crime victim and the crime victim's family, and just punishment for the harm inflicted".

C-19 refers to the fundamental purpose as the protection of the public. But this must be modified to refer specifically to the victim. So an alternative formulation might be:

"protection of the public and the promotion of justice for victim, offender and community".

These would need to be reinforced by a modification to the text of C-19 to (a) promoting respect for the law through the imposition of _(just)_ sentences "that are just for victim, offender and community".

In addition to section (d) promoting and providing for redress to victims of offences or to the community. An additional section should be added (e) promoting and providing for reconciliation between victim, offender and community.

- **Principles**

The principles should reflect the foreseeable consequences to the victim, the safety of the victim and the possibility for redress and reconciliation.

So the principle (a) should refer to the gravity of the offence, the foreseeable consequences to the victim, the degree of responsibility of the offender...

A new principle should be added that "restitution to the victim should be given priority over any other sanction imposed on the offender".

- **Procedure**

In determining sentence the court should consider a written statement of the impact of the crime on the victim, specifying injuries and losses suffered, their concerns for their safety and their views on reparation. This would be prepared in all cases where there is a victim. It should not be confused with a pre-sentence report prepared by a probation officer, which may only be prepared in a limited category of offences. It might be prepared by the victim or by a victim assistance worker, employed by the police or the crown attorney. It would need to be updated before sentencing. The views on reparation should be substantiated by receipts or other independent measures of value. There would be a right to cross examination of the person who prepared the written report by both the defense, the prosecution and where applicable the counsel for the victim.

Before giving the offender an opportunity to make representations with respect to sentence, the court shall give the victim an opportunity to be heard by the court with regard to the written statement of impact. There would only be a right of rebuttal.

- **Range of Sanctions**

C-19 envisaged the use of punitive damages whereby a court could order a payment from the offender to the victim in addition to that needed to make restitution. Undoubtedly this is a way of improving the recognition of the victim.

Many US states have surtax systems that mandate the Levying of a special tax on an offender. The proceeds from this tax are in turn paid into a special fund that finances victim assistance and compensation programmes. Some states take a percentage of the fines and the US Federal Victims of Crime Act also uses a proportion of the fines.

- **Reasons**

Providing reasons for a sentence can be very important to the victim. Explaining why a particular sentence is given in terms that respond to the concerns of the victim show recognition of the victim's situation.

- **Enforcement of Sanctions**

In Canada, the state recovers the vast majority of fines ordered by the court, however, a significant proportion of restitution orders are never paid. Most commentators recommend that restitution orders be enforced in a manner similar to fines.

- **Related Processes**

These same principles and procedures would need to be followed from arrest through to the final parole decision.

- **Training and Guidelines**

This model would require extensive training of judges using guidelines similar to those that judges have developed in the USA (see Appendix D).

CONCLUSION

Victims have been excluded from the justice system - kept in the shadows as tools of evidence. The root of the problem is the concept that crime is committed only against the Queen. This legal fiction has little appeal to victims whose life, liberty and security of the person have been violated.

The victim can be recognised as a party to the criminal process. It is in the interests of the state's law enforcement to recognise those interests. It is in the interests of the public perception of the justice process. More importantly it is in the interests of the people who have suffered the most directly as a result of crime - the victim and their families.

Greater participation by the victim in sentencing will lead to greater confidence in the justice system. The debate on just sentences will be taken from the steps of Parliament into the courts of justice, where the competing interests of victim, offender and community can be considered compassionately and fairly. It may lead to changes, perhaps greater use of restitution and some different use of prisons. However its effect on prison populations is unclear. At the national level, there are 10 per cent less persons in prison per capita in France which involves the victim in its process than in England which does not (Canada, 1982). In contrast the introduction of determinate sentencing models without providing until recently for participation of the victim has been associated with a jump of more than 40 per cent in incarceration rates in the USA in less than 4 years.

The challenge to the Sentencing Commission is how to provide a system of sentencing that will be effective and just to offender, victim and the community.

They can encourage action immediately without new legislation. Judges can study the various guidelines that have been prepared in the USA. They can promote intensive training sessions on victims for judges, prosecutors and defence lawyers that will help identify specific ways through which they can respect the basic person of victims.

Progress will require funds to provide the services for victims so that they can understand the process and input into it. Some of these services can be provided by agencies in the community or in police departments that are working with victims from immediately after the offence. Some may be better provided by services in prosecutors offices or in the courts themselves. Those funds are likely less than the inflation increase that might be provided for criminal justice this year in Canada.

Some will require changes in legislation to specify the role of the victim in the criminal process. For instance to give a right to the victim to request restitution in a criminal court, to give the victim a right to be present and heard at critical stages in the pre-trial, trial, sentencing and correctional stages of criminal procedure. Legislation will be needed also to provide a tax for each conviction that could fund these services.

These actions would not endanger the rights of suspects and offenders. These would encourage lawyers, judges and all of us as Canadians to treat victims as people too".

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APPENDIX A

DRAFT RESOLUTION III

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The General Assembly,

Recalling that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should continue its present work on the development of guidelines and standards regarding abuse of economic and political power,^{22/}

Cognizant that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized,

Recognizing that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders,

1. Affirms the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power;
2. Stresses the need to promote progress by all States in their efforts to that end, without prejudice to the rights of suspects or offenders;
3. Adopts the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the present resolution, which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power;
4. Calls upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, endeavour:

22/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4).

- (a) To implement social, health (including mental health), educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress;
 - (b) To promote community efforts and public participation in crime prevention;
 - (c) To review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct, and other abuses of power;
 - (d) To establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes;
 - (e) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns;
 - (f) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;
 - (g) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention;
 - (h) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims;
5. Recommends that, at the international and regional levels, all appropriate measures should be taken:
- (a) To promote training activities designed to foster adherence to United Nations standards and norms and to curtail possible abuses;
 - (b) To sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and to promote information exchanges on the most effective means of so doing;
 - (c) To render direct aid to requesting Governments designed to help them to curtail victimization and alleviate the plight of victims;
 - (d) To develop ways and means of providing recourse for victims where national channels may be insufficient;
6. Requests the Secretary-General to invite Member States to report periodically to the General Assembly on the implementation of the Declaration, as well as on measures taken by them to this effect;

7. Also requests the Secretary-General to make use of the opportunities, which all relevant bodies and organizations within the United Nations system offer, to assist Member States, whenever necessary, in improving ways and means of protecting victims both at the national level and through international co-operation;

8. Further requests the Secretary-General to promote the objectives of the Declaration, in particular by ensuring its widest possible dissemination;

9. Urges the specialized agencies and other entities and bodies of the United Nations system, relevant intergovernmental and non-governmental organizations and the public to co-operate in the implementation of the provisions of the Declaration.

ANNEX

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Social assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

B. Victims of abuse of power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violation of national criminal laws but

that constitute violations of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

APPENDIX B

DECLARATION OF RIGHTS OF VICTIMS OF CRIME

The Governments of Canada, working closely with private agencies, shall guarantee the following RIGHTS OF VICTIMS OF CRIME.

Victims of crime are persons who suffer physical, financial or emotional harm as a result of criminal conduct. Victims may include the family of persons who are killed or incapacitated by crime.

Victims are entitled to respect from the criminal justice system as they are essential to its existence and success.

Victims are entitled to particular care where it is needed because of the nature of the crime or such factors as age, sex, disability or ethnic origin.

1. The right to restitution from the offender

Victims of crime are entitled to fair and prompt restitution from the offender.

The enforcement of orders for restitution shall have preference over other financial or community sanctions.

Victims have the right to accept services from the offender in lieu of financial restitution.

Victims have the right to participate in informal reconciliation procedures to determine financial or other redress.

2. The right to compensation from the Government

Victims who have sustained significant impairment of physical or mental health shall be provided with prompt financial compensation from the Government when restitution by the offender is not adequate.

3. The right to prompt return of property

Victims have the right to the return of stolen property by police as soon as it is recovered unless its retention is justified by the public interest.

4. The right to medical, social and material assistance

Victims have a right to access to crisis counselling and appropriate social, legal, medical and mental health services, which shall be provided or assisted by Governments.

Victims have a right to prompt, sympathetic and reassuring assistance from police, justice, health and social service personnel.

5. The right to assistance in distress

Governments shall provide encouragement, support and protection to persons who intervene to assist victims in distress.

6. The right to have views presented and considered whenever personal interests are affected

The victims shall have the opportunity to present their views to the crown attorney about pre-trial release of the offender and the disposition of the case, including dismissal, the charge, pretrial diversion and the sentence.

Victims shall be entitled to make submissions to judges and correctional authorities, whenever the impact of the crime, the release of a violent offender or restitution is being considered.

7. The right to privacy

Victims have the right to protection from unnecessary invasions of their privacy by police, lawyers and judges.

Guidelines on the protection of the privacy of victims will be established for the media.

8. The right to protection from intimidation

Victims threatened with physical violence shall have increased police protection.

Victims have a right to waiting areas in court buildings that are separate from those used by the accused.

9. The right to be informed of Victim's Rights

Victims have a right to be given complete information on their rights at the earliest opportunity by police, court, health and social service personnel.

Victims have the right to receive adequate written notice from courts and correctional authorities of any hearings in the offender's case that affect their personal interests.

Victims have the right to an explanation of their role, the scope and the progress of the proceedings before they participate.

APPENDIX C

Alabama - Minnesota

I-Introduced Bills
B-Bill of Rights

REI
X-Enacted Legislation
BX-Bill of Rights/Individual Statute

| LEGISLATION | TOTAL (52 States) | AL AK AZ AR CA CO CT DE DC FL GA HI ID IL IN IA KS KY LA ME MD MA MI MN | | | | | | | | | | | | | | | | | | | | | | | |
|--|----------------------|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| | | AL | AK | AZ | AR | CA | CO | CT | DE | DC | FL | GA | HI | ID | IL | IN | IA | KS | KY | LA | ME | MD | MA | MI | MN |
| 1. Funding for Services | 28 ¹ | X | X | X | X | X | BX | X | X | - | X | - | - | - | X | X | - | - | X | - | I | - | B | - | X |
| 2. Funding/ Domestic Violence | 49 | X | X | X | X | X | X | X | X | - | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| 3. Funding/Sexual Assault | 10 ² | X | X | - | - | X | X | - | X | - | X | - | X | - | X | - | - | - | X | X | - | I | X | | |
| 4. Compensation | 44 ³ | X | X | X | X | X | X | X | X | X | X | X | X | - | X | - | X | X | X | X | X | X | X | X | X |
| 5. Bill of Rights | 31 ⁴ | - | X | - | X | X | - | X | - | X | - | X | X | X | - | - | - | X | X | - | X | X | - | X | X |
| 6. Victim Witness Information | 29 | - | B | - | B | B | B | X | B | - | B | - | B | - | B | - | - | - | - | B | X | B | B | | |
| 7. Protection from Intimidation | 27 | X | B | - | BX | X | BX | - | BX | - | B | - | X | - | - | X | - | - | B | - | B | - | B | - | |
| 8. Property Return | 24 | - | - | - | BX | X | BX | - | B | - | B | - | B | - | B | B | - | X | X | - | B | - | B | - | |
| 9. Secure Waiting Areas | 17 | - | - | - | B | X | B | - | B | - | - | - | - | X | - | T | - | - | - | B | - | | | | |
| 10. Employer Intercession | 21 | - | B | - | B | X | B | - | B | - | B | - | B | - | X | X | - | - | - | - | B | B | - | | |
| 11. Creditor Intercession | 3 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | B | - | | | | |
| 12. Speedy Disposition/Trial | 10 ⁵ | - | - | - | - | X | B | - | B | - | - | - | - | - | - | - | - | - | - | B | - | | | | |
| 13. Victim Impact Statement | 34 | - | B | X | X | B | B | X | X | - | BX | X | - | B | X | X | - | X | - | - | B | X | B | B | B |
| 14. Victim Statement of Opinion | 9 | - | - | X | - | B | - | X | - | - | - | - | - | - | - | - | - | - | - | B | - | B | - | | |
| 15. Allocation/ Oral Statement/Sentencing | 10 | - | - | - | - | B | BX | X | - | - | B | X | - | B | X | X | - | - | - | B | - | B | B | B | |
| 16. Plea Bargain Participation/ Consultation | 10 | - | - | - | - | - | - | - | B | - | - | - | - | - | - | - | - | - | - | B | - | | | | |
| 17. Court Attendance | 9 ⁶ | X | - | - | X | - | - | - | - | B | X | - | - | X | - | - | - | - | - | X | - | B | - | | |
| 18. Parole Hearing/VIS | 19 | X | B | X | X | X | X | - | - | - | X | - | B | B | - | - | I | - | - | X | X | B | - | | |
| 19. Parole Allocation | 10 | - | - | X | X | X | X | - | - | - | - | B | B | - | - | I | - | - | X | - | B | - | | | |
| 20. Restitution/ General | 46 | X | X | X | X | BX | X | X | - | B | X | X | BX | X | - | X | X | - | X | BX | X | B | B | B | |
| 21. Restitution & Condition of Probation/ Parole/ Work Release | 24 | X | X | - | - | X | - | - | - | BX | X | - | - | - | X | X | - | X | B | X | - | I | B | | |
| 22. Mandatory Restitution | 32 | X | - | X | X | BX | X | X | X | - | B | X | - | B | X | X | X | X | X | - | B | - | - | | |
| 23. Notification/ Court Proceeding/Schedule Changes | 22 | - | B | X | B | - | B | X | B | - | B | - | - | - | - | - | - | - | - | - | B | B | - | | |
| 24. Notification/ Pre-Trial Release | 9 | - | - | - | - | B | - | - | B | - | - | B | - | - | B | - | - | - | - | - | - | - | - | - | |
| 25. Notification/Bail | 4 | - | - | - | - | - | - | - | - | - | - | B | - | - | - | - | - | - | - | - | - | - | - | - | |

FOOTNOTES:

- ¹Funding includes general appropriations, fines, penalty assessments and executive department appropriations.
- ²The National Coalition Against Sexual Assault (NCSA), estimates that 34 states have some funding.
- ³Arkansas law permits compensation on a county basis. Utah's compensation program only covers drunk driving victims. Note: I do not receive funding for FY 85-86 due to state's budgetary problems.
- ⁴Indiana and Oklahoma have passed a package of legislation considered an omnibus Victim Rights statute. Oregon's Victim Fund is outlined in the Victim services funding statute.
- ⁵State Justice's policy in Oregon states that no civil case is allowed to go forth if a criminal trial is pending.
- ⁶Florida currently has a bill similar to pending to make their state enforcement a constitutional change.

Summary of State Crime Victims Legislation – July 1985

Alabama - Minnesota

6

I—Introduced Bills
B—Bill of Rights

X-Enacted Legislation

Summary of State Crime Victims Legislation—July 1995
Mississippi • Wyoming

I—Introduced Bills
 B—Bill of Rights

KEY
 X—Enacted Legislation
 B/X—Bill of Rights/Individual Statute

| LEGISLATION | MS | MO | MT | NE | NV | NH | NJ | NM | NY | NC | ND | OH | OK | OR | PA | RI | SC | SD | TN | TX | UT | VT | VA | WA | WV | WI | WY |
|---|----|----|----|----|----|----|----|-----|----|----|-----|-----|----|-----|----|----|----|----|----|----|----|----|-----|----|----|----|----|
| 1. Funding for Services | - | X | - | - | - | X | - | X | X | - | X | X | X | X | X | X | X | - | - | X | - | X | X | - | X | - | |
| 2. Funding/ Domestic Violence | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| 3. Funding/Sexual Assault | - | - | - | X | - | - | X | - | X | - | X | - | X | - | X | - | X | - | I | X | - | - | - | - | - | - | |
| 4. Compensation | - | X | X | X | I | X | X | X | X | X | X | X | X | X | X | X | X | - | X | X | I | X | X | X | X | X | |
| 5. Bill of Rights | - | - | X | X | X | - | I | - | X | I | - | X | X | X | X | X | - | - | X | X | X | X | X | X | X | X | |
| 6. Victim/Witness Information | - | - | - | B | B | - | - | B | - | - | B | X | X | B/X | B | B | - | - | B | B | B | B | B | B | B | - | |
| 7. Protection from Intimidation | - | - | - | B | B | X | - | B/X | - | - | B | X | - | B | B | B | - | - | B | 'B | - | B | B | B | B | X | |
| 8. Property Return | - | - | - | B | B | - | - | B/X | - | - | B | - | X | B | B | B | X | - | - | - | B | B | B | B | B | - | |
| 9. Secure Waiting Areas | - | - | - | B | B | - | - | B | - | - | B | - | - | B | B | B | - | - | - | - | - | - | B | B | B | B | |
| 10. Employer Intercession | - | - | - | B | - | - | - | B/X | - | - | B | - | X | - | B | B | - | - | - | B | - | B | B | B | B | X | |
| 11. Creditor Intercession | - | - | - | - | - | - | - | B | - | - | - | - | - | - | - | B | - | - | - | - | - | - | - | - | - | - | |
| 12. Speedy Disposition/Trial | - | - | - | B | X | - | - | - | - | - | X | - | - | B | - | - | X | - | - | - | - | - | - | - | - | B | |
| 13. Victim Impact Statement | - | - | X | X | X | X | - | - | X | - | - | B/X | - | X | B | B | B | - | - | B | - | B | X | B | B | X | |
| 14. Victim Statement of Opinion | - | - | - | - | - | X | - | - | X | - | - | B | - | - | B | - | - | - | - | - | - | - | - | - | - | - | |
| 15. Allocation/Draft Statement Sentencing | - | - | - | - | - | X | I | - | - | - | B | - | - | B | - | - | B | - | B | - | B | - | B | B | - | - | |
| 16. Plea Bargain Participation/Consultation | - | - | - | - | X | - | - | - | B | - | - | - | X | - | I | B | X | - | - | B | - | - | B | - | - | B | |
| 17. Court Attendance | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | B | - | - | B | - | - | B | |
| 18. Parole Hearing/MS | - | - | - | - | - | X | X | - | X | - | - | B | - | - | I | X | B | - | - | B | - | - | - | - | - | - | - |
| 19. Parole Allocation | - | - | - | - | - | X | X | - | - | - | B | - | - | I | I | - | - | - | - | - | - | - | - | - | - | - | - |
| 20. Restitution/ General | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | - | B | - | X | X | B/X | B | B | B | X |
| 21. Restitution a Condition of Probation/ Partial/Work Release | X | I | X | - | X | - | - | - | X | X | - | - | - | B/X | - | - | X | X | B | - | - | B | X | X | - | - | - |
| 22. Mandatory Restitution | - | - | X | - | X | - | I | X | B | X | - | - | X | - | - | S | X | X | X | S | B | B | B | B | - | X | |
| 23. Notification/ Court Proceedings Schedule Changes | - | - | - | B | B | - | - | B | - | - | B/X | - | - | B | B | B | - | - | B | B | - | B | B | B | B | - | - |
| 24. Notification/ Pre-Trial Release | - | - | - | B | - | - | B | - | - | B | - | - | B | B | B | - | - | B | B | - | - | B | - | B | B | - | - |
| 25. Notification/Bar | - | - | - | B | - | - | B | - | - | B | - | - | B | - | B | - | - | B | - | B | - | B | - | B | - | - | - |

Summary of State Crime Victims Legislation—July 1995

Mississippi - Wyoming

KEY

I—Introduced Bills X—Enacted Legislation
 B—Bill of Rights *BX—Bill of Rights/Individual Statute

| LEGISLATION | MS | MO | MT | NE | NV | NH | NJ | NM | NY | NC | ND | OH | OK | OR | PA | RI | SC | SD | TN | TX | UT | VT | VA | WA | WV | WY |
|--|----|----|----|-----|----|----|----|----|----|-----|----|----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|
| 26. Notification/ Plea Agreements | - | - | - | - | - | - | B | - | - | - | - | - | - | - | B | - | B | - | - | - | B | - | - | - | - | |
| 27. Notification/ Sentencing | - | - | - | - | - | - | B | - | - | - | - | - | - | - | V | - | B | - | - | - | - | B | B | - | - | |
| 28. Notification/ Final Disposition | - | - | - | B | B | - | - | B | - | B | - | B | - | - | B | B | B | - | - | - | - | - | B | B | - | |
| 29. Notification/ Parole/ Hearings | X | - | - | - | - | X | X | - | - | B | X | - | B | B/X | B | - | - | B | X | - | B | - | - | - | - | |
| 30. Notification/ Pardon | - | - | - | - | X | - | - | X | - | - | X | - | B | - | B | - | - | - | - | - | B | - | B | - | - | |
| 31. Notification/ Work Release | - | - | - | - | - | - | X | - | - | - | B | B | B | - | - | - | - | - | - | - | B | - | - | - | - | |
| 32. Notification/ General Release/Felony | - | - | B | B/X | - | - | X | X | - | - | - | B | B | B | - | - | - | - | - | - | B | - | - | - | - | |
| 33. Notification/ Escape | - | - | - | X | - | X | I | - | - | - | - | B | - | - | - | - | - | - | - | - | B | - | - | - | - | |
| 34. Counselor Confidentiality/ General | - | - | - | - | - | - | X | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| 35. Counselor Confidentiality/ Domestic Violence | - | X | - | - | X | - | X | - | X | - | - | - | - | - | - | - | - | - | X | - | - | - | - | - | - | |
| 36. Counselor Confidentiality/ Sexual Assault | - | - | - | - | X | X | - | X | - | X | X | - | - | - | X | - | - | - | - | X | - | X | - | X | - | - |
| 37. Victim Privacy/ Address Protection | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | I | |
| 38. Notarized-for- Profit | - | - | X | X | - | X | X | - | - | B/X | X | - | B/X | X | X | - | X | X | X | - | X | - | X | - | X | |
| 39. Children's Bill of Rights | - | - | - | - | - | - | - | - | - | - | - | I | - | - | - | - | - | - | - | - | X | - | X | - | - | |
| 40. Child Videotaped/ Closed Circuit Testimony & Depositions | - | X | - | - | X | X | - | X | X | - | - | I | X | - | I | - | B | - | X | X | X | - | - | X | - | |
| 41. Children/Fund- ing Services | - | - | - | X | - | - | - | - | X | - | - | - | I | - | - | - | - | - | - | - | - | - | - | - | - | |
| 42. Child Competency | - | - | - | - | - | - | - | - | - | - | - | - | X | - | - | X | - | X | - | - | X | - | - | - | - | |
| 43. Missing Children's Act | - | X | - | - | - | - | I | - | - | - | I | - | X | - | X | - | X | - | - | X | - | - | - | - | - | |
| 44. Child Statute Limitations | - | - | - | - | - | - | - | - | - | - | - | - | I | - | - | - | - | - | - | X | - | - | - | - | - | |
| 45. Child/Background Check | - | - | - | - | - | - | - | - | - | - | - | - | - | X | - | - | - | - | - | - | - | - | - | - | - | |
| 46. Child/Hearsey Admissibility | - | - | - | - | - | - | - | - | - | - | - | X | - | I | - | - | - | X | X | - | - | - | - | - | - | |
| 47. Child/Speedy Trial | - | - | - | - | - | - | - | - | - | - | - | - | I | - | - | - | - | - | - | - | X | - | - | - | - | |
| 48. Child Privacy Protection | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | X | - | - | - | - | |
| 49. Child Court/ Juvenile Court Proceedings | - | - | - | - | X | - | - | - | X | - | - | - | I | - | - | - | - | - | - | - | - | X | - | - | - | |
| 50. Domestic Violence/ Protection Orders | - | - | - | - | - | X | - | X | - | X | - | X | - | X | - | X | - | X | - | X | - | X | - | X | - | |

Victim Compensation*

All programs cover the injured victim(s) of crimes causing physical injury and compensate for medical losses. Two types of physical injury crimes may be excluded: those which involve a perpetrator who lives in the same household, is a relative of or has had a continuing relationship with, the victim; and those which have been the result of a motor vehicle crime. The following chart indicates the variation on those issues and others affecting eligibility and benefits. For a detailed report on compensation programs, the reader should refer to *Compensating Victims of Crime: An Analysis of American Programs* by Daniel McGillis and Patricia Smith, prepared for the National Institute of Justice by Abt Associates, Inc.

| Program Elements | States | | | | | | | | | | | | | | | | | | | |
|-------------------------|--------|------|------|-----|-----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|
| | AL | AK | CA | CO | CT | DE | FL | HI | IL | IN | IA | KS | KY | LA | MA | MD | MI | MN | MO | MT |
| Eligibility: | | | | | | | | | | | | | | | | | | | | |
| Intrastate | X | X | | | X | | X | X | X | X | | X | X | X | X | X | X | X | X | X |
| Dependents | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Third Parties | X | X | X | X | | X | | X | X | | | X | | X | | | | X | X | |
| Family Exclusion | | | | X | | | | | | X | | X | X | X | X | X | X | X | X | X |
| Residents Only** | | | X | X | X | X | X | X | | | | | X | X | X | X | X | X | X | X |
| Motor Vehicles Excluded | | | | X | X | | | X | | | | X | X | | | | X | | | X |
| Reckless MV Included | X | | X | | | | | X | X | | | | | X | | | | | | |
| Means Test | | | | | | X | X | | | | | | X | X | | X | X | | | |
| Recovery: | | | | | | | | | | | | | | | | | | | | |
| Counseling | X | X | X | X | X | X | X | X | X | X | ? | X | X | X | X | X | X | X | X | X |
| Disability | X | X | . | X | X | X | | X | X | ? | | X | X | | X | | X | | | |
| Rehabilitation | X | X | X | X | X | X | X | | X | X | ? | X | X | | X | X | X | X | X | X |
| Loss/Earnings | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Loss/Support | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Funeral | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Replacement Services | X | X | | X | X | | X | | X | X | X | | | | | | X | X | | |
| Pain/Suffering | | | | | | | X | X | | | | | | | | | | | | |
| Other Expenses | X | X | X | | X | X | X | | X | X | X | X | X | X | X | X | | | | X |
| Benefits: | | | | | | | | | | | | | | | | | | | | |
| Maximum (in thousands) | 10 | 25 | 25 | 10 | 10 | 20 | 10 | 10 | 15 | 10 | 21 | 10 | 15 | 10 | 10 | 45 | 15 | 50 | 10 | 25 |
| Minimum Loss | 0 | 0 | 100 | 25 | 100 | 25 | 0 | 0 | 200 | 100 | 0 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 200 | 0 |
| Deductible | 0 | 0 | 0 | | 100 | 0 | 0 | 0 | 200 | 100 | 0 | 100 | 100 | 100 | 100 | 100 | 100 | 0 | 0 | 200 |
| Attorney Fees | ? | X | X | | | X | X | | X | X | | X | X | X | X | X | X | X | X | X |
| Emergency Award | ? | 1500 | 1000 | 500 | 500 | X | 500 | 500 | 0 | 500 | 500 | 0 | 500 | 500 | 0 | 1000 | 0 | 500 | 100 | 0 |
| Reduced by Contribution | X | X | X | . | X | X | X | X | X | X | | | | | | X | X | X | X | X |
| Denied by Contribution | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Source of Funds: | | | | | | | | | | | | | | | | | | | | |
| General Rev. | | X | | | | | | | X | X | X | X | X | X | X | X | X | X | X | X |
| Penalty Assess. | X | | X | X | X | X | X | | | | X | | X | | X | | | | X | X |
| Fines | X | | | X | X | X | X | | | | X | | X | | X | | | | X | X |
| Other | | | X | | | | | | | X | X | | | | | | | | | X |

*See Legislative Summaries, Part II, for a description of each state's compensation program.

**Subject to change in 1985-86:

The Victims of Crime Act of 1984 requires that states which receive federal funding must provide benefits to residents and non-residents, as well as victims of federal crime.

Victim Compensation (Cont.)

| Program Elements | States | | | | | | | | | | | | | | | | | | | |
|-------------------------|--------|-----|-----|------|----|------|-----|----|-----|------|------|----|-----|------|------|------|-----|----|------|------|
| | NC | NE | NV | NJ | NM | NY | ND | OH | OK | OR | PA | RI | SC | TN | TX | VA | WA | WV | WI | DC |
| Eligibility: | | | | | | | | | | | | | | | | | | | | |
| Intravenous | X | X | X | X | | | X | X | X | X | X | | X | X | X | X | X | X | X | X |
| Dependents | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Third Parties | X | X | X | X | X | | | X | X | X | X | X | | | X | X | X | X | X | X |
| Family Exclusion | X | X | | | X | | X | | | X | | X | | | | | | X | X | X |
| Residents Only | | | X | | X | | | | | | | | X | X | | | | | | X |
| Motor Vehicles Excluded | X | X | X | X | | X | | X | | | X | | | | | X | X | | | X |
| Reckless MV Included | X | | | | | | | | | | | | X | | X | X | X | X | X | |
| Means Test | | | X | | X | | | | | | | | | X | | | | | X | X |
| Recovery: | | | | | | | | | | | | | | | | | | | | |
| Counseling | X | | X | X | X | X | | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Disability | X | | | | | | X | X | | X | | | | | X | X | | X | X | X |
| Rehabilitation | X | X | X | | X | X | X | X | X | X | X | X | | X | X | | X | X | X | X |
| Loss/Earnings | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Loss/Support | X | | | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Funeral | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Replacement Services | X | | | | | X | X | X | X | X | X | X | | | | X | | X | X | X |
| Pain/Suffering | | | | | | | | | | | | | X | | X | | | | X | X |
| Other Expenses | | X | | X | X | | X | | X | X | X | | | | | X | | X | X | X |
| Benefits: | | | | | | | | | | | | | | | | | | | | |
| Maximum (in thousands) | 20 | 10 | 15 | 25 | 12 | 20 | 25 | 25 | 10 | 23 | 35 | 25 | 10 | 5 | 25 | 15 | 15 | 20 | 12 | 25 |
| Minimum Loss | 100 | 0 | 100 | 100 | 0 | 0 | 100 | 0 | 0 | 250 | 100 | 0 | 300 | 100 | 0 | 100 | 200 | 0 | 0 | 100 |
| Deductible | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 250 | 0 | 0 | | 0 | 0 | 100 | 200 | 0 | 0 | 0 |
| Attorney Fees | X | X | X | X | | X | X | X | | | X | X | X | X | | | | X | X | X |
| Emerg Award | 0 | 500 | 500 | 1500 | X | 1500 | 100 | X | 500 | 1000 | 1000 | 0 | 500 | 1500 | 1500 | 2000 | 0 | 0 | 1000 | 1000 |
| Reduced by Contribution | X | | | X | X | X | | | X | X | X | | X | | X | X | X | X | | |
| Denied by Contribution | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Source of Funds: | | | | | | | | | | | | | | | | | | X | | X |
| General Rev. | X | X | X | X | X | X | X | X | X | | | | | | | | | | | |
| Penalty Assess. | | | | | | | | | | X | X | X | X | X | X | X | X | X | X | X |
| Fines | | | | | | | | | X | X | X | X | X | X | X | X | X | X | X | |
| Other | | | X | | | | | | X | | | | | | | | | | | |

STATEMENT
OF
RECOMMENDED
JUDICIAL
PRACTICES

Adopted by the

National Conference of the Judiciary
on
The Rights of Victims of Crime

APPENDIX D

Single copies of this booklet may be ordered without charge from the National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850. Specify title and this number (NCJ 93208). Organizations desiring multiple copies are encouraged to reproduce all or any part of this booklet. Organizations desiring to borrow camera-ready art and copy for reproduction should contact Communications Director, NCJRS, at the above address.

providing the necessary information and services provided, afford them additional protection from harm, and create increased respect for the judicial process by improving their participation in the criminal justice system.

We believe that all of this can be accomplished without impairing the constitutional and statutory safeguards appropriately afforded all persons charged with crime. Our goal is not to reduce the rights guaranteed defendants but rather to assure the rights of victims and witnesses.

RECOMMENDATIONS

I. Fair Treatment of Victims and Witnesses

Judges should play a leadership role in ensuring that victims and witnesses are treated with courtesy, respect and fairness.

A. Information About Court Procedures and Facilities

All victims and witnesses in criminal cases should be provided essential information about court procedures and courthouse facilities. Judges should encourage the following practices:

1. That victims and witnesses be provided with information regarding the rights and privileges available to victims and witnesses, and about the physical layout of the courthouse, parking areas, public transportation routes, witness fees, state compensation funds, and other available financial assistance;
2. That court administrators establish reception areas and provide victims and witnesses information about public and community services;

3. That prosecutors explain to victims the criminal justice system insofar as it relates to the victims' cases and what is expected of the victims in the prosecution of the cases.

B. Notice to Victims and Witnesses

- Victims and witnesses should be fully informed about the criminal justice proceedings in their cases. Judges should encourage:
1. That the victims should be able to obtain from appropriate court personnel information concerning the status of their cases;
 2. That, if requested, prosecutors inform victims of serious crimes that they may obtain, if possible, timely notice of all bail, pre-trial, trial and post-trial hearings, if the victims provide a current address or telephone number;
 3. That, if requested, appropriate officials, if possible, give timely notice to victims of serious crimes about the release of the defendant from custody, pre-trial and post-trial, if they provide a current address and phone number;
 4. That victims be informed by prosecutors of the disposition of their cases.

C. Special Services

- Judges should recognize that victims and witnesses may require special services and support, both material and psychological.

Judges should encourage the following practices:

1. Separate waiting areas for defense and prosecution witnesses;
2. Interpreter and translator services for victims and witnesses while they are in the courthouse;
3. An "on call" system to minimize unnecessary trips to court;
4. The expeditious return of evidence;
5. The availability of special transportation and protection to and from the courthouse when witnesses' safety is a consideration;
6. Informing the public generally of the importance of supporting the witnesses' participation in court proceedings and encouraging the adoption of legislation to accord witnesses the same protection from adverse actions by employers as are customarily given jurors and members of the National Guard;
7. Child care services for witnesses;
8. Crisis intervention, counseling and other support services for victims;
9. Ensuring the victim is not charged for rape examinations or other costs of collecting and preserving evidence;
10. Establishing fair and appropriate witness fees.

D. Restitution

Judges should order restitution in all cases unless there is an articulated reason for not doing so, whether the offender is incarcerated or placed on probation.

Victim Participation

Victims shall be allowed to participate and, where appropriate, to give input through the prosecutor or to testify in all stages of judicial proceedings.

A. Participation may include but is not limited to the following:

1. Pre-trial release or bail hearings;
2. The propriety and conditions of diversion;
3. The scheduling of court proceedings;
4. Continuances or delays; judges should state on the record the reason for granting a continuance;
5. Plea and sentence negotiations;
6. Sentencing;
7. Victim-offender mediation in non-violent cases, when appropriate.

B. To assist victim participation:

1. A victim's advisor should be permitted to remain in the courtroom with the victim, but not participate in the judicial proceedings;
 2. Victim impact statements prior to sentencing should be encouraged and considered;
- Judges should use their judicial authority to protect victims and witnesses from harassment, threats, intimidation, and harm.

III. Protection

3. The victim or the victim's family should be allowed to remain in the courtroom when permitted by law and when it will not interfere with the right of the defendant to a fair trial.

A. This should include:

1. Encouraging that separate waiting rooms be provided for defense and prosecution witnesses;
2. Requiring that bail be conditioned on the defendants' having no access to victims or prosecution witnesses;
3. On showing of good cause, limiting access to the addresses of victims and witnesses;
4. Encouraging that victims and witnesses be advised that if they agree to be interviewed prior to trial by opposing counsel or investigators, they may insist that the interviews be conducted at neutral locations;
5. Encouraging legislation or rules which would require parole boards to advise the judge, the prosecutor, the public and the victim where appropriate, prior to any hearing on the release of an offender of a serious crime.

- B. Judges in protecting sensitive victims (minors, victims of sexual abuse, families of homicide victims, the elderly, and the handicapped) may consider the following:**
1. Expediting trials of cases involving sensitive victims;
 2. Encouraging specially designed or equipped courtrooms to protect sensitive victims, provided that the right of confrontation is not abridged;
 3. Permitting the use of videotaped depositions in cases involving sensitive victims, provided that the right of confrontation is not abridged;
 4. Allowing sensitive victims to have an individual of their choice accompany them in closed juvenile proceedings, closed criminal proceedings, and in camera proceedings.

V. All These Recommended Judicial Practices Are Subject to Existing Rules of Court, Statutes and Constitutional Provisions.

Conclusion

Judges have a role in improving the treatment of victims and witnesses by reason of their position in the American judicial system and their positions in their communities.

Judges believe that fair treatment of victims and witnesses can, consistent with constitutional limitations, be brought about by changes in the law, rules of procedure and legislation. Judges believe that they can influence the actions of others, including officers of the court and public officials, in the treatment of witnesses and victims. Judges also can encourage community support for change in the treatment of witnesses and victims. By their attitude and the attitude of their staff, judges can set examples in the treatment of witnesses and victims.

We urge that our fellow judges exercise their leadership role in improving the treatment of victims and witnesses. Victims of crime should not be victims of the criminal justice system. State, regional and national programs and conferences for judges and non-judges should be held on methods to improve the treatment of victims and witnesses and to develop solutions to the problems suggested.

IV. Judicial Education

Judges at the trial and appellate levels should be encouraged to participate in training programs dealing with the needs, comforts and legal interests of crime victims.

We urge that our fellow judges exercise their leadership role in improving the treatment of victims and witnesses. Victims of crime should not be victims of the criminal justice system.

FEDERAL GUIDELINES FOR FAIR TREATMENT OF CRIME VICTIMS AND WITNESSES IN
THE CRIMINAL JUSTICE SYSTEM

Sec. 5 (a) Within 270 days after the date of enactment of this Act, the Attorney General shall develop and implement guidelines for the Department of Justice consistent with the purposes of this Act in preparing the guidelines the Attorney General shall consider the following objectives

(1) SERVICES TO VICTIMS OF CRIME.—Law enforcement personnel should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following—

"(A) availability of crime victim compensation (where applicable);

"(B) community-based victim treatment programs;

"(C) the role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

"(D) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

(2) NOTIFICATION OF AVAILABILITY OF PROTECTION.—A victim or witness should routinely receive information on steps that law enforcement officers and attorneys for the Government can take to protect victims and witnesses from intimidation.

(3) SCHEDULING CHANGES.—All victims and witnesses who have been scheduled to attend criminal justice proceedings should either be notified as soon as possible of any scheduling changes which will affect their appearances or have available a system for alerting witnesses promptly by telephone or otherwise.

(4) PROMPT NOTIFICATION TO VICTIMS OF MAJOR SERIOUS CRIMES.—Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of judicial proceedings relating to their case, including—

"(B) the initial appearance of an accused before a judicial officer;

(C) the release of the accused pending judicial proceedings; and

(D) proceedings in the prosecution of the accused (including entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, the release of the accused from such imprisonment).

(5) CONSULTATION WITH VICTIM.—The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, should be consulted by the attorney for the Government in order to obtain the views of the victim or family about the disposition of any Federal criminal case brought as a result of such crime, including the views of the victim or family about—

(A) dismissal;

(B) release of the accused pending judicial proceedings;

(C) plea negotiations; and

(D) pretrial diversion program.

(6) SEPARATE WAITING AREA.—Victims and other prosecution witnesses should be provided prior to court appearance a waiting area that is separate from all other witnesses.

(7) PROPERTY RETURN.—Law enforcement agencies and prosecutors should promptly return victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it.

(8) NOTIFICATION TO EMPLOYER.—A victim or witness who so requests should be assisted by law enforcement agencies and attorneys for the Government in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or attorney for the Government, is subjected to serious financial strain, should be assisted by such agencies and attorneys in explaining to creditors the reason for such serious financial strain.

(9) TRAINING BY FEDERAL LAW ENFORCEMENT TRAINING FACILITIES.—Victim assistance education and training should be offered to persons taking courses at Federal law enforcement training facilities and attorneys for the Government so that victims may be promptly, properly, and completely assisted.

(10) GENERAL VICTIM ASSISTANCE.—The guidelines should also ensure that any other important assistance to victims and witnesses, such as the adoption of transportation, parking, and translator services for victim in court be provided.

(b) Nothing in this title shall be construed as creating a cause of action against the United States.

(c) The Attorney General shall assure that all federal law enforcement agencies outside of the Department of Justice adopt guidelines consistent with subsection (a) of this section.

APPENDIX E

Victim Rights Sample Statute

Massachusetts Chapter 258B.

Rights of Victims and Witnesses of Crime.

AN ACT ESTABLISHING CERTAIN RIGHTS OF VICTIMS OF CRIMES.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES IN GENERAL COURT ASSEMBLED, AND BY THE AUTHORITY OF THE SAME, AS FOLLOWS:

SECTION 1. The General Laws are hereby amended by inserting after chapter 258A the following chapter:

Section 1. The following words as used in this chapter shall have the following meanings, unless the context otherwise requires:—

“Board”, the victim and witness assistance board as established in section four;

“Court”, a forum established under the general laws for the adjudication of criminal complaints or indictments;

“Crime”, an act committed in the commonwealth which would constitute a crime if committed by a competent adult including any act which may result in an adjudication of delinquency;

“Disposition”, the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made;

“Family member”, a spouse, child, sibling, parent, or legal guardian of a victim;

“Restitution”, money or services which a court orders a defendant to pay or render to a victim as part of the disposition;

“Victim”, a natural person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime. The term “victim” also includes the family members of a minor, incompetent or a homicide victim.

“Witness”, any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

Section 2. A victim has the rights and is eligible of [sic] the services set forth under this chapter only if such victim reported the crime to law enforcement authorities within five days of its occurrence or discovery, unless the district attorney finds that a good cause existed [for] not having done so.

Section 3. To the extent reasonably possible and subject to the available resources, victims and witnesses of crime, or in the case of a homicide, the family members of the victim whether or not such members are witnesses in any criminal proceeding, shall be afforded the following rights where applicable:

(a) for victims, family members, and witnesses to be informed by the prosecutor of the final disposition of the case. Victims, family members, and witnesses shall, at their request, be informed by the appropriate custodial authority whenever the defendant receives a temporary, provisional or final release from custody or whenever the defendant escapes from custody. Those persons requesting such notice must provide the appropriate authority with current information as to address and telephone number.

(b) for victims, family members, and witnesses, to be notified by the district attorney, in a timely manner, when a court proceeding to which they have been summoned will not go on as scheduled;

(c) for victims and witnesses, to be provided with information by the district attorney as to the level of protection available and to receive protection for [sic] the local law enforcement agencies from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;

(d) for victims and witnesses, to be informed by the district attorney of financial assistance and other social services available to victims or witnesses of a crime, including information relative to applying for such assistance or services;

(e) for victims, to be informed by the district attorney of the right to request that restitution be an element of the final disposition of a case and to obtain assistance in the documentation of the victim's losses;

(f) for victims and witnesses, to be informed by the court and the district attorney of procedures to be followed in order to apply for and receive any witness fee to which they are entitled;

(g) for victims, family members, and witnesses, to be provided a secure waiting area or room during court proceedings by the district attorney;

(h) for victims or family members to have the opportunity to inform the court of the impact of the crime pursuant to section four A of chapter two hundred and seventy-nine of the General Laws as created by section two of this act;

(i) for victims to have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by [the] court, the district attorney, or law enforcement agencies within ten days of its taking or recovery if it is not needed for law enforcement or prosecution purposes or as expeditiously as possible when said property is no longer needed for law enforcement or prosecution purposes;

(j) for victims and witnesses, to be provided, where appropriate, with employer and creditor intercession services by the district attorney to seek employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process, and to seek consideration for [sic] creditors if the victim is unable, temporarily, to continue payments;

(k) for victims, family members, and witnesses, to a prompt disposition of the case in which they are involved as a victim or a witness.

Section 4. There is hereby established a victim and witness assistance board, to consist of five members who shall serve without compensation. Notwithstanding any provision of section six of chapter two hundred and sixty-eight A of the General Laws to the contrary, the board shall be composed of the attorney general or his designee who shall be chairman; two district attorneys who shall be appointed by the governor; and two members of the public who shall be appointed by the governor, of whom one shall be a victim. The members of the board first appointed shall serve as follows: of the district attorneys appointed by the governor, one shall serve for three years, and one shall serve for one year; of the members of the public appointed by the governor, one shall serve for three years and one shall serve for two years. The successor of each such member shall serve for a term of three years and until his successor is duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the board shall be eligible for reappointment.

The board shall by majority vote of its members, appoint an executive director who shall serve at such rate of compensation as the board directs for a term of three years unless removed for cause by a vote of four members of the board.

The executive director shall have the power to hire such staff, subject to the approval of the board, as is needed to fulfill the powers and duties of the board. The executive director shall have such other powers and duties as the board may delegate to him.

The provisions of chapter thirty-one of the General Laws shall not apply to the executive director or any employee of the board.

The board shall review and approve program plans, annual reports, and the implementation and operation of programs as described in this chapter. The board shall, subject to appropriation, and from the funds made available from the Victim and Witness Assistance Fund, as established in section nine of this chapter or from funds made available from any other public or private source, provide funding for the preparation, submission and approval of plans required under section six and for the operation of approved comprehensive victim and witness assistance programs pursuant to section five, as the board deems appropriate. Administrative costs related to the operation of the board including compensation for the executive director and staff shall be paid from the Victim and Witness Assistance Fund.

The board shall promulgate rules for the preparation, review, approval, and the implementation of program plans and annual reports, and for the administration and operation of programs approved under this section. Said rules shall include criteria to guide district attorneys in determining, for purposes of this chapter, whether a particular crime has a victim and who is the victim of such crime.

In addition to the foregoing, the board shall:

(a) have printed and shall make available to social service agencies, medical facilities, and law enforcement agencies, cards, posters, brochures or other materials explaining the victim and witness rights and services established under this chapter and the victim compensation program as provided under chapter two hundred and fifty-eight A of the General Laws;

(b) assist hospitals, clinics and other medical facilities, whether public or private, in disseminating information giving notice of the rights established under this chapter and the availability of compensation to victims of crime pursuant to chapter two hundred and fifty-eight A of the General Laws. This assistance may include providing informational materials including posters suitable to be displayed in emergency and waiting rooms;

(c) assist law enforcement agencies in familiarizing all of its [sic] officers and employees with the crime victims' rights as provided under this chapter, as well as victim compensation available under chapter two hundred and fifty-eight A of the General Laws. This assistance may include supplying informational literature on this subject to be utilized as part of the training curriculum for all trainee officers; and

(d) assist all local law enforcement agencies in establishing procedures whereby expedient notification is given to victims and witnesses, as defined under this chapter, of the rights provided under this chapter, as well as the compensation services provided under chapter two hundred and fifty-eight A of the General Laws. In municipalities which do not have a local law enforcement agency, the board shall establish procedures whereby it, in cooperation with the state police, shall give notice to victims of crimes as provided in this section.

Section 5. Each district attorney shall create and maintain, to the extent reasonably possible and subject to the available resources, a program to afford victims and witnesses of crimes the rights and services described in this chapter. Those services shall include but not be limited to the following:

(a) court appearance notification services, including cancellations of appearances;

(b) informational services relative to the availability and collection of witness fees, victim compensation and restitution;

(c) escort and other transportation services related to the investigation or prosecution of the case, if necessary;

(d) case process notification services;

(e) employer intercession services;

- (f) expedited return of property services;
- (g) protection services;
- (h) family support services including child and other dependent care services;
- (i) waiting facilities; and
- (j) social service referrals.

Section 6. Each district attorney shall submit to the board a program plan for [the judicial district] within the district attorney's jurisdiction not later than six months after the effective date of this chapter and annually thereafter during the month of August. The program plan shall include but not be limited to: a description of the services to be provided to victims and witnesses in each judicial district within the district attorney's jurisdiction; the personnel or agencies responsible for providing individual services and related administrative programs; proposed staffing for the program; proposed education, training and experience requirements for program staff and, where appropriate, the staff of agencies providing individual services and related administrative services; and a proposed budget for implementing the program. The district attorney shall include in the annual program plan a detailed report on the operation of the program during the preceding year.

Section 7. The district attorney, local law enforcement agencies, local social services agencies, and court shall cooperate to afford victims and witnesses of crimes, the rights and services described in this chapter.

Section 8. The court shall impose an assessment of twenty-five dollars against any person who has attained the age of seventeen years and who is convicted of a felony or against whom a finding of sufficient facts for a conviction is made on a complaint charging a felony. The court shall impose an assessment of fifteen dollars against any person who has attained the age of seventeen and who is convicted of a misdemeanor or against whom a finding of sufficient facts for a conviction is made on a complaint charging a misdemeanor. The court shall impose an assessment of fifteen dollars against any person who has attained the age of fourteen years and who is adjudicated a delinquent child or against whom a finding of sufficient facts for a finding of delinquency is made. When multiple offenses from a single incident are charged, the total assessment shall not exceed twenty-five dollars, provided however, that the total assessment against a person who has not attained seventeen years shall not exceed fifteen dollars. Where, in the discretion of the court, any assessment imposed pursuant to this section would cause the person against whom the assessment is imposed severe financial hardship, the court may reduce or waive said assessment.

All assessments made under the preceding paragraph shall be collected by the court and shall be transmitted monthly to the treasurer. The assessment from any conviction or adjudication of delinquency which is subsequently overturned on appeal shall be refunded by the court to the person whose conviction or adjudication of delinquency is overturned. Said court shall deduct such funds from the assessments transmitted to the treasurer. Assessments pursuant to this section shall be in addition to any other fines or restitution imposed in any disposition.

Section 9. There is hereby created the Victim and Witness Assistance Fund to be established on the books of the commonwealth in the state treasury. Any assessment imposed pursuant to section eight shall be made available, subject to appropriation, to the board which shall determine the amounts to be disbursed to the public programs described in section five and approved by the board which provides comprehensive services to victims and witnesses of all types of crimes and do not restrict services to victims and witnesses of a particular crime.

Section 10. Nothing in this chapter shall be construed as creating a cause of action on behalf of any person against any public employee, public agency, the commonwealth or any agency responsible for the enforcement of rights and provisions of services set forth in this chapter.

SECTION 2. Chapter 279 of the General Laws is hereby further amended by inserting after section four the following new section:-

Section 4A. (a) the provisions of this section shall govern the disposition for any violation of the provisions of paragraph (b) of section twenty-four G of chapter ninety of the General Laws and for any felony, excluding any crime for which a sentence of death may be imposed, in any case which involves an identified victim whose whereabouts are known.

(b) Before disposition in any case governed by this section, the district attorney shall give the victim an actual notice of the time and place of sentencing and of the victim's right to make a statement to the court, orally or in writing at the victim's option, as to the impact of the crime and as to a recommended sentence. Before disposition, the court shall allow any victim who elects to make such an oral statement the opportunity to do so in the presence of the defendant. Before disposition, the district attorney shall file any such written statement with the court and shall make it available to the defendant.

If the victim is unable to make an oral or written statement because of his mental, emotional, or physical incapacity or his age, his attorney or a designated family member shall be provided the notice and the opportunity to make a statement prescribed in this paragraph.

(c) Before disposition in any case governed by this section, the office of the district attorney shall cause to be prepared a written statement as to the impact of the crime on the victim, which shall be filed with the court as part of the pre-sentence report and made available to the defendant. The statement shall include the following: (1) the name of the victim; (2) documentation of any net financial loss suffered by the victim or a family member as a result of the crime; (3) in cases where the crime has had an impact on the victim's personal welfare or family relationship or has had a psychological impact on the victim or his family, a statement of such impact.

(d) The court shall, in the manner prescribed by rule of court, allow the defendant to have the opportunity to rebut the victim's oral or written statements and the district attorney's written statement if the court decides to rely upon such statements or parts thereof in imposing sentence.

(e) No sentence shall be invalidated because of failure to comply with the provisions of this section. This section shall not be construed to create any cause of action or any right to appeal on behalf of any person.

SECTION 3. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 4. A special commission, to consist of five members of the House of Representatives to be appointed by the Speaker thereof, three members of the Senate to [be] appointed by the President thereof, a justice of the District Court Department of the Trial Court to be appointed by the Chief Justice thereof, a justice of the Boston Municipal Court Department of the Trial Court to be appointed by the Chief Justice thereof, a justice of the Superior Court Department of the Trial Court to be appointed by the Chief Justice thereof and five members to be appointed by the Governor, one of whom shall be a District Attorney, one of whom shall be a law enforcement officer, and one of whom shall be a person who has been a victim of a violent crime is hereby established for the purpose of making an investigation and study of the affects of crime on the victims there. Said investigation shall include but not be limited to the adequacy and efficiency of: the programs of services to the victims and witnesses of crimes, as provided under this act; the programs of public information relative to victims' and witnesses' rights; the programs for victim restitution and compensation and the availability and sufficiency of funding mechanisms for said programs. The Chairman of the special commission shall be elected by a majority vote of the members thereof. Said commission shall report to the General Court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry out its recommendations into effect by filing the same with the Clerk of the House of Representatives on or before the last Friday in December, nineteen hundred and eighty-four.

APPENDIX F

VICTIM RELATED FACTORS IN PROPOSED NEW YORK SENTENCING GUIDELINES

Aggravating Factors

1. The defendant's conduct during the commission of the offense manifested deliberate cruelty to the victim.
2. The defendant knew, or should have known, that the victim was particularly vulnerable because of age, infirmity, reduced mental or physical capacity, or the defendant used his or her position of trust, confidence or fiduciary responsibility to facilitate the commission of the offense.
3. The offense was a major economic offense or series of offenses, so identified by the following:
 - (i) The offense involved very substantial monetary loss, realised or potential; or
-
7. The defendant threatened the victim, a member of the victim's family, or a witness, with intent to affect his or her testimony.

Mitigating Factors

1. The victim was an initiator, willing participant, or provoker of the incident.
2. The defendant voluntarily made a substantial and good faith effort to prevent or mitigate the harm caused.
-
5. The defendant was a passive participant, or played a minor role in the crime, or manifested sincere concern for the safety or well-being of the victim.
-
8. The presumptively correct sentence is unduly harsh given extraordinary circumstances, and a more lenient sentence would not deprecate the seriousness of the crime.

APPENDIX G
PRESENT RIGHTS OF VICTIMS IN CANADA

In Canada, discussion about justice for victims is not new.

Firstly, we were among the first jurisdictions to institute state compensation for criminal injuries. However, even today few victims receive any help because victims are informed about the program by the police or other agencies after they become victims - only 1 in 55 of eligible victims ever apply. Further the amounts of money paid are small - usually less than victim of an industrial accident would get and substantially less than a civil action would decide.

Secondly as part of the concern for alternatives to imprisonment for offenders, we talked about restitution and made some amendments to the criminal code. Even so fines are both ordered and paid in numbers that dwarf the few orders of restitution made.

Health care and some welfare services are available for victims to use. Also there are many temporary experiments and services in different parts of Canada for victims of crime, though 24 out of 25 communities have no such services.

Set out below is a complete list of the Criminal Code and Young Offender Act sections that could be seen as providing limited rights to victims. In the Charter of Rights and Freedoms, the right to life, liberty and security of the person may be argued as a right to protection from crime for victims, though it is included as a right for accused persons.

CRIMINAL CODE

Section 10 clarifies that civil remedies are not "affected by reason that the act or omission is a criminal offence".

Section 34-37 allows the use of force in self defence.

Section 381 defines a summary conviction offence of "Intimidation".

Section 442 allows the court to exclude the public from the courtroom, restrict publication of information that might identify the "complainant" and inform the "complainant" of the right to make an application to restrict publication.

Section 637-643 allows a commissioner of evidence to be appointed where the witness is not likely to be able to attend the court.

Section 653-655 provides for the court to order restoration, and/or compensation for loss, of property upon application of the "aggrieved party".

Section 663 (2) (e) provides for the probation order to include a condition of restitution or reparation.

- sexual assault

Section 246.6 & 246.7 limits the introduction of previous sexual history and reputation of the complainant.

YOUNG OFFENDERS ACT

Section 3 (e) reaffirms the rights of "young persons" to "be heard in the course of, and to participate in, the processes that lead to decisions that affect them".

Section 14 (2) requires a "pre-disposition report" to "include (b) the results of an interview with the victim in the case, where applicable where reasonably possible;"

Section 14 (8) specifies that the court "may, on request" provide the report to "any person" who "has a valid interest in the proceedings".

Section 20 (1) (c) enables the court to "order" compensation for property losses and readily ascertainable special damages for injury.

Section 20 (1) (d) and (e) provide for restitution of property and protection of innocent purchaser.

Section 20 (1) (f) provides for the young person to perform personal services in lieu of compensation.

Section 21 (5) requires notice to the victim of any compensation, restitution or personal service order.

Section 21 (6) requires the consent of the person to whom the personal service will be provided.

